

## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB4258

by Rep. Dagmara Avelar

#### SYNOPSIS AS INTRODUCED:

415 ILCS 5/22.64 new

Amends the Environmental Protection Act. Requires the Environmental Protection Agency to select and enter into a contract with a packaging stewardship organization to operate a packaging stewardship program meeting specified requirements. Provides that, beginning one calendar year following the effective date of the contract entered into by the Agency and the stewardship organization, a producer may not sell, offer for sale, or distribute for sale in or into the State a product contained, protected, delivered, presented, or distributed in or using packaging material for which the producer has not complied with all applicable requirements of the provisions. Provides that the stewardship organization shall annually submit to the Agency and make available on its publicly accessible website a report with specified requirements. Provides that the stewardship organization shall annually disburse to participating municipalities from a packaging stewardship fund reimbursement payments for the median per-ton cost of managing packaging material that is readily recyclable and reimbursement payments for the median per-ton cost of managing packaging material that is not readily recyclable. Requires the Agency to administer and enforce the provisions and to adopt rules as necessary to implement, administer, and enforce the provisions. Contains other provisions.

LRB102 21396 CPF 30512 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by  
5 adding Section 22.64 as follows:

6 (415 ILCS 5/22.64 new)

7 Sec. 22.64. Packaging stewardship program.

8 (a) In this Section:

9 "Alternative collection program" means a program for the  
10 management of packaging material that is operated by an  
11 individual producer or group of producers and that has been  
12 approved by the Agency in accordance with subsection (j).

13 "Brand" means a name, symbol, word, or mark that  
14 identifies a product, rather than its components, and  
15 attributes the product to the owner of the brand.

16 "Collection" means the gathering of waste, including the  
17 preliminary sorting and storage of waste for the purposes of  
18 transport to a recycling establishment.

19 "European article number" or "EAN" means a 13-digit  
20 barcode used for product identification purposes, also  
21 referred to as an international article number.

22 "Franchisee" means a person who is granted a franchise by  
23 a franchisor authorizing the use of the franchisor's trade

1 name, service mark, or related characteristic and the sharing  
2 of the franchisor's proprietary knowledge or processes  
3 pursuant to an oral or written arrangement for a definite or  
4 indefinite period.

5 "Franchisor" means a person who grants to a franchisee a  
6 franchise authorizing the use of the person's trade name,  
7 service mark, or related characteristic and the sharing of the  
8 person's proprietary knowledge or processes pursuant to an  
9 oral or written arrangement for a definite or indefinite  
10 period.

11 "Low-volume producer" means a producer that sold, offered  
12 for sale, or distributed for sale in or into the State during  
13 the prior calendar year products contained, protected,  
14 delivered, presented, or distributed in or using more than one  
15 ton but less than 15 tons of packaging material in total.

16 "Packaging material" means a discrete type of material, or  
17 a category of material that includes multiple discrete types  
18 of material with similar management requirements and similar  
19 commodity values, used for the containment, protection,  
20 delivery, presentation, or distribution of a product,  
21 including a product sold over the Internet, at the time that  
22 the product leaves a point of sale with or is received by the  
23 consumer of the product. "Packaging material" does not include  
24 a discrete type of material, or a category of material that  
25 includes multiple discrete types of material, that is:

26 (1) intended to be used for the long-term storage or

1 protection of a durable product and that can be expected  
2 to be usable for that purpose for a period of at least 5  
3 years;

4 (2) a beverage container;

5 (3) a container for architectural paint, as long as a  
6 paint stewardship program is in operation, has been  
7 approved by the Agency, and the stewardship organization  
8 operating that program:

9 (A) has demonstrated to the Agency's satisfaction  
10 that it recycles at least 90% of the containers of  
11 architectural paint collected under the program; or

12 (B) subject to the approval of the Agency, if  
13 unable to satisfy the requirements of subparagraph  
14 (A), has demonstrated to the Agency's satisfaction  
15 that it recycles at least 80% of the containers of  
16 architectural paint collected under the program; or

17 (4) excluded from the definition of "packaging  
18 material" by the Agency by rule.

19 "Packaging stewardship fund" or "fund" means a privately  
20 held account established and managed by the stewardship  
21 organization under subsection (o).

22 "Packaging stewardship organization" or "stewardship  
23 organization" means the entity contracted by the Agency under  
24 subsection (c) to operate the packaging stewardship program.

25 "Packaging stewardship program" or "program" means the  
26 program implemented under this Section by the stewardship

1 organization to assess and collect payments from producers  
2 based on the amount, whether by weight or volume, of packaging  
3 material sold, offered for sale, or distributed for sale in or  
4 into the State by each producer and to reimburse participating  
5 municipalities for certain municipal recycling and waste  
6 management costs.

7 "Participating unit of local government" means a unit of  
8 local government that has complied with the requirements of  
9 subsection (l) and is eligible for reimbursement of certain  
10 costs in accordance with subsection (m).

11 "Post-consumer recycled material" means new material  
12 produced using material resulting from the recovery,  
13 separation, collection, and reprocessing of material that  
14 would otherwise be disposed of or processed as waste and that  
15 was originally sold for consumption. "Post-consumer recycled  
16 material" does not include post-industrial material or  
17 pre-consumer material.

18 "Producer" means a person who:

19 (1) has legal ownership of the brand of a product  
20 sold, offered for sale, or distributed for sale in or into  
21 the State contained, protected, delivered, presented, or  
22 distributed in or using packaging material; or

23 (2) is the sole entity that imports into the State for  
24 sale, offer for sale, or distribution for sale in or into  
25 the State a product contained, protected, delivered,  
26 presented, or distributed in or using packaging material

1 that is branded by a person that meets the requirements of  
2 paragraph (1) and has no physical presence in the United  
3 States.

4 "Producer" includes a low-volume producer and a franchisor  
5 of a franchise located in the State, but does not include the  
6 franchisee operating that franchise. "Producer" does not  
7 include a nonprofit organization exempt from taxation under  
8 the United States Internal Revenue Code of 1986, Section  
9 501(c)(3).

10 "Proprietary information" means information that is a  
11 trade secret or production, commercial, or financial  
12 information the disclosure of which would impair the  
13 competitive position of the submitter and would make available  
14 information not otherwise publicly available.

15 "Readily recyclable" means, with respect to a type of  
16 packaging material, that the type of packaging material meets  
17 the criteria and standards for recyclability as determined by  
18 the Agency by rule under subsection (p).

19 "Similar municipalities" means 2 or more municipalities  
20 that, as determined by the Agency by rule under subsection  
21 (p), have similar population sizes and similar geographic  
22 locations and share other Agency specified criteria.

23 "Toxicity" means, with respect to packaging material, the  
24 presence in packaging material or the use in the  
25 manufacturing, recycling, or disposal of packaging material of  
26 intentionally introduced metals or chemicals regulated by the

1 Agency, food contact chemicals of high concern or priority  
2 food contact chemicals regulated by the Agency, or chemicals  
3 of concern, chemicals of high concern, or priority chemicals  
4 identified by the Agency.

5 "Universal product code" or "UPC" means a standard for  
6 encoding a set of lines and spaces that can be scanned and  
7 interpreted into numbers for product identification purposes.

8 "Universal product code" includes any industry-accepted  
9 barcode used for product identification purposes in a manner  
10 similar to a UPC, including, but not limited to, an EAN.

11 (b) Notwithstanding any provision of this Section to the  
12 contrary, a producer is exempt from the requirements and  
13 prohibitions of this Section in any calendar year in which:

14 (1) the producer realized less than \$2,000,000 in  
15 total gross revenue during the prior calendar year, except  
16 that, for the period beginning one calendar year following  
17 the effective date of the contract entered into by the  
18 Agency and the stewardship organization under subsection  
19 (c) and ending 3 years after that effective date, a  
20 producer that realized less than \$5,000,000 in total gross  
21 revenue during the prior calendar year is exempt from the  
22 requirements and prohibitions of this Section;

23 (2) the producer sold, offered for sale, or  
24 distributed for sale in or into the State during the prior  
25 calendar year products contained, protected, delivered,  
26 presented, or distributed in or using less than one ton of

1       packaging material in total;

2           (3) the producer realized more than 50% of its total  
3       gross revenue in the prior calendar year from the sale of  
4       goods it acquired through insurance salvages, closeouts,  
5       bankruptcies, and liquidations; or

6           (4) the producer sold, offered for sale, or  
7       distributed for sale in or into the State during the prior  
8       calendar year to retailers or direct to consumers products  
9       that were perishable food and that were contained,  
10       protected, delivered, presented, or distributed in or  
11       using less than 15 tons of packaging material in total.

12       In this subsection, "perishable food" means any food that  
13       may spoil or otherwise become unfit for human consumption  
14       because of its nature, type, or physical condition, including,  
15       but not limited to, fresh and processed meats, poultry,  
16       seafood, dairy products, bakery products, eggs in the shell,  
17       and fresh fruits and vegetables. "Perishable food" does not  
18       include any such food that is sold, offered for sale, or  
19       distributed for sale frozen except for frozen wild  
20       blueberries.

21       A producer claiming an exemption under this subsection  
22       shall provide to the Agency sufficient information to  
23       demonstrate that the producer meets the requirements for an  
24       exemption under this subsection within 30 days after receiving  
25       a request from the Agency to provide such information.

26       (c) Consistent with the requirements of this Section, the



1 Agency shall select and enter into a contract with a packaging  
2 stewardship organization to operate the packaging stewardship  
3 program under this Section.

4 (d) Consistent with applicable competitive bidding  
5 requirements under State purchasing laws and following the  
6 initial adoption of rules by the Agency under subsection (p)  
7 to implement this Section, the Agency shall issue a request  
8 for proposals for the operation of the packaging stewardship  
9 program by a packaging stewardship organization. The proposals  
10 must be required to cover a 10-year operation of the packaging  
11 stewardship program by the successful bidder and must be  
12 required to include, at a minimum, the following:

13 (1) A description of how the bidder will administer  
14 the stewardship organization, including:

15 (A) the mechanism or process, to be developed with  
16 input from producers, by which a producer may request  
17 and receive assistance from the stewardship  
18 organization in the reporting of required information  
19 and regarding methods by which the packaging material  
20 used by a producer may be modified so as to reduce the  
21 producer's payment obligations under subsection (h);  
22 and

23 (B) the mechanism or process, to be developed with  
24 input from municipalities, by which a participating  
25 unit of local government may request and receive  
26 assistance from the stewardship organization in the

1       reporting of required information and regarding  
2       methods by which a unit of local government's  
3       recycling program may be modified so as to increase  
4       access to and participation in the program.

5       (2) A description of how the bidder intends to solicit  
6       and consider input from interested persons, including, but  
7       not limited to, producers, municipalities, environmental  
8       organizations, and waste management and recycling  
9       establishments, regarding the bidder's operation of the  
10      packaging stewardship program, if selected.

11      (3) A description of how the bidder intends to  
12      establish and manage the packaging stewardship fund  
13      consistent with subsection (o), including, but not limited  
14      to:

15           (A) the staffing the bidder intends to use for  
16           management of the fund;

17           (B) a plan to ensure equity of access to the fund  
18           for participating municipalities;

19           (C) a plan for providing technical support to  
20           producers and municipalities regarding program  
21           requirements; and

22           (D) a plan for administering payments to and  
23           reimbursements from the fund and the financial  
24           mechanisms, including investment types, if any, the  
25           bidder intends to use in managing the fund.

26      (4) A proposed financial assurance plan that ensures

1       all funds held in the packaging stewardship fund are  
2       immediately and exclusively forfeited and transferred to  
3       or otherwise made immediately available to the Agency to  
4       support waste diversion, reuse, or recycling programs when  
5       the stewardship organization's contract with the Agency is  
6       terminated by the Agency or expires, unless the  
7       stewardship organization enters into a new contract with  
8       the Agency prior to the expiration of the stewardship  
9       organization's existing contract.

10       (5) A proposed budget outlining the anticipated costs  
11       of operating the packaging stewardship program, including  
12       identification of any start-up costs that will not be  
13       ongoing and a description of the method by which the  
14       bidder intends to determine and collect producer payments  
15       during the initial start-up period of program operation to  
16       fund the program's operational costs during that initial  
17       start-up period and to reimburse or require additional  
18       payments by those producers subsequent to that initial  
19       start-up period based on producer reporting of the actual  
20       amount of packaging material sold, offered for sale, or  
21       distributed for sale in or into the State by each producer  
22       during that initial start-up period. The proposed budget  
23       under this paragraph may overestimate the cost of  
24       operating the program during its initial start-up period  
25       of operation but must describe the method and basis for  
26       any overestimate.

1           (6) A certification that the bidder will not share,  
2           except with the Agency, information provided to the bidder  
3           by a producer that is proprietary information and that is  
4           identified by the producer as proprietary information. The  
5           certification must include a description of the methods by  
6           which the bidder intends to ensure the confidentiality of  
7           such information.

8           (7) A description of how the bidder will conduct a  
9           statewide recycling needs assessment that, at a minimum,  
10          includes an evaluation of:

11           (A) current funding needs affecting recycling  
12           access and availability in the State;

13           (B) the capacity, costs, and needs associated with  
14           the collection and transportation of recyclable  
15           material in the State;

16           (C) the processing capacity, market conditions,  
17           and opportunities in the State and regionally for  
18           recyclable material; and

19           (D) consumer education needs in the State with  
20           respect to recycling and reducing contamination in  
21           collected recyclable material.

22           (8) Any additional information required by the Agency.

23           (e) In accordance with applicable requirements of State  
24           purchasing law, the Agency shall enter into a contract with a  
25           bidder that has submitted a proposal in accordance with the  
26           requirements of subsection (d), the term of which must cover

1 10 years of operation of the packaging stewardship program by  
2 the stewardship organization. The contract must, at a minimum,  
3 include provisions to ensure that the stewardship organization  
4 will conduct the statewide recycling needs assessment  
5 described in paragraph (7) of subsection (d) and report the  
6 results of that assessment to the Agency within a reasonable  
7 time frame and operate the program in accordance with all  
8 applicable statutory requirements and the rules adopted by the  
9 Agency under this Section.

10 If, at the close of the competitive bidding process under  
11 subsection (d), the Agency determines that no bidder has  
12 submitted, in accordance with this subsection, a proposal that  
13 meets the requirements of subsection (d), the Agency may  
14 reopen a new competitive bidding process under this  
15 subsection.

16 (f) This subsection governs the sale or distribution in  
17 the State of products with packaging not in compliance with  
18 the requirements of this Section and sets forth requirements  
19 for the collection and publication of compliance information.

20 (1) Except as provided in paragraph (4), beginning one  
21 calendar year following the effective date of the contract  
22 entered into by the Agency and the stewardship  
23 organization under subsection (c), a producer may not  
24 sell, offer for sale, or distribute for sale in or into the  
25 State a product contained, protected, delivered,  
26 presented, or distributed in or using packaging material

1       for which the producer has not complied with all  
2       applicable requirements of this Section.

3       (2) The stewardship organization shall provide to the  
4       Agency a list of producers that are participating in the  
5       program and a list of the UPCs of products for which the  
6       producer has complied with the program's requirements and,  
7       if known to the stewardship organization, a list of  
8       producers that are not participating in the program and  
9       are not compliant with the program's requirements. The  
10       stewardship organization shall provide to the Agency  
11       regularly updated producer compliance information  
12       described in this paragraph.

13       (3) Based on information provided to the Agency under  
14       paragraph (1) and any other information considered by the  
15       Agency, the Agency shall make available on its publicly  
16       accessible website a regularly updated list of UPCs of  
17       products for which the Agency has determined the producer  
18       has complied with all applicable requirements of this  
19       Section and a list of producers and, where applicable,  
20       specific products and the UPCs of those products for which  
21       the Agency has determined the producer has not complied  
22       with all applicable requirements of this Section.

23       (4) Notwithstanding a producer's failure to comply  
24       with all applicable requirements of this Section for a  
25       type or types of packaging material used to contain,  
26       protect, deliver, present, or distribute a product, the

1 Agency may authorize the sale or distribution for sale in  
2 or into the State of another product or products of the  
3 producer that are contained, protected, delivered,  
4 presented, or distributed in or using a different type or  
5 types of packaging material for which that producer has  
6 complied with all applicable requirements of this Section.  
7 If the Agency provides such an authorization, the Agency  
8 shall ensure that such information is included in the  
9 information made available under paragraph (3).

10 (g) In accordance with rules adopted by the Agency, the  
11 stewardship organization shall annually submit to the Agency  
12 and make available on its publicly accessible website a report  
13 that includes, at a minimum, the following information:

14 (1) Contact information for the stewardship  
15 organization.

16 (2) A list of participating producers and the brands  
17 and UPCs of products associated with those producers.

18 (3) The total amount, whether by weight or volume, of  
19 each type of packaging material sold, offered for sale, or  
20 distributed for sale in or into the State by each  
21 participating producer as reported in accordance with  
22 subsection (i).

23 (4) As applicable, the total amount, whether by weight  
24 or volume, of each type of packaging material collected  
25 and managed by each participating producer through  
26 alternative collection programs approved by the Agency

1       under subsection (j).

2           (5) A complete accounting of payments made to and by  
3       the stewardship organization during the prior calendar  
4       year, including information on how the stewardship  
5       organization determined the amount of such payments in  
6       accordance with subsections (h) and (m) and the rules  
7       adopted under subsection (p).

8           (6) A list of producers that are not participating in  
9       the program that are required to participate in the  
10       program and any product-specific noncompliance, if known  
11       by the stewardship organization.

12           (7) A description of education and infrastructure  
13       investments made by the stewardship organization in prior  
14       calendar years and an evaluation of how those investments  
15       were designed to increase access to recycling in the State  
16       and to encourage the reuse of packaging material.

17           (8) A description of the results of the representative  
18       audits required under subsection (p).

19           (9) An assessment of the progress made toward the  
20       achievement of any program goals required by the Agency by  
21       rule under subsection (p).

22           (10) An assessment of whether the payment schedule for  
23       producer payments adopted by the Agency by rule under  
24       subsection (p) has been successful in incentivizing  
25       improvements to the design of packaging material as  
26       encouraged through the allowance of payment adjustments in



1 accordance with subsection (p).

2 (11) Any proposals for changes to the packaging  
3 stewardship program or investments in education and  
4 infrastructure designed to reduce the amount of packaging  
5 material used, increase access to recycling, increase the  
6 recycling of or recyclability of packaging material,  
7 reduce program costs, or otherwise increase program  
8 efficiency, which may include an analysis of best  
9 practices for municipal recycling programs.

10 (12) The results of a third-party financial audit of  
11 the stewardship organization.

12 (13) An estimate of the annual greenhouse gas  
13 emissions effects in the State associated with the  
14 operation of the stewardship program. In this paragraph,  
15 "greenhouse gas" means any chemical or physical substance  
16 that is emitted into the air and that the Agency  
17 determines by rule may reasonably be anticipated to cause  
18 or contribute to climate change. "Greenhouse gas"  
19 includes, but is not limited to, carbon dioxide, methane,  
20 nitrous oxide, hydrofluorocarbons, perfluorocarbons, and  
21 sulfur hexafluoride.

22 (14) Any additional information required by the  
23 Agency.

24 (h) In accordance with the provisions of this subsection  
25 and rules adopted by the Agency, no later than 180 days after  
26 the effective date of the contract entered into by the Agency

1 and the stewardship organization under subsection (c), and  
2 annually thereafter, a producer shall make payments to the  
3 stewardship organization to be deposited into the packaging  
4 stewardship fund under subsection (o) based on the net amount,  
5 whether by weight or volume, of each type of packaging  
6 material sold, offered for sale, or distributed for sale in or  
7 into the State by the producer and not managed by the producer  
8 under an approved alternative collection program. The Agency  
9 shall adopt rules setting forth the manner in which such  
10 payments must be calculated for packaging material that is  
11 readily recyclable and packaging material that is not readily  
12 recyclable, which must be designed to incentivize the use by  
13 producers of packaging material that is readily recyclable and  
14 disincentivize the use by producers of packaging material that  
15 is not readily recyclable.

16 (i) In accordance with rules adopted by the Agency, a  
17 producer shall annually report to the stewardship organization  
18 the total amount, whether by weight or volume, of each type of  
19 packaging material sold, offered for sale, or distributed for  
20 sale in or into the State by the producer in the prior calendar  
21 year.

22 (j) In accordance with the requirements of this subsection  
23 and rules adopted by the Agency, a producer or group of  
24 producers may develop and operate an alternative collection  
25 program to collect and manage a type or types of packaging  
26 material sold, offered for sale, or distributed for sale in or

1 into the State by the producer or producers. A producer that  
2 manages a type of packaging material under an approved  
3 alternative collection program through reuse, recycling, and,  
4 where approved by the Agency, management of that packaging  
5 material through incineration may wholly or partially offset  
6 the producer's payment obligations under the packaging  
7 stewardship program with respect to that same type of  
8 packaging material only.

9 Beginning on the effective date of the contract entered  
10 into by the Agency and the stewardship organization under  
11 subsection (c), a producer or group of producers seeking to  
12 implement an alternative collection program shall submit a  
13 proposal for the establishment of that program to the Agency  
14 for approval. The Agency shall approve or deny the proposal  
15 within 120 days after receipt and shall provide an opportunity  
16 for public review and comment on the proposal prior to its  
17 approval or denial. The Agency may approve an alternative  
18 collection program for a term of 5 years and, at the expiration  
19 of such term, the producer or group of producers operating the  
20 program may submit an updated proposal to the Agency for  
21 approval.

22 In determining whether to approve a proposed alternative  
23 collection program, the Agency shall consider the following:

24 (1) Whether the alternative collection program will  
25 provide year-round, convenient, free, statewide collection  
26 opportunities for the types of packaging material to be

1 collected under that program.

2 (2) To what extent the alternative collection program  
3 intends to manage those types of packaging material to be  
4 collected under the program through reuse for an original  
5 purpose, through recycling or through disposal at an  
6 incineration facility. The Agency may not approve an  
7 alternative collection program that proposes management of  
8 a packaging material type through disposal at an  
9 incineration facility unless that packaging material is  
10 not readily recyclable and the program proposes a process  
11 to begin reuse or recycling of that type of packaging  
12 material within a period of 3 years or less.

13 (3) Whether the education and outreach strategies  
14 proposed for the alternative collection program can be  
15 expected to significantly increase consumer awareness of  
16 the program throughout the State.

17 (4) How the alternative collection program intends to  
18 accurately measure the amount, whether by weight or  
19 volume, of each packaging material type collected, reused,  
20 recycled, disposed of at an incineration facility, or  
21 otherwise managed under the program.

22 (5) To what extent approval of the alternative  
23 collection program may disproportionately impact any  
24 community in the State.

25 A proposed modification to an approved alternative  
26 collection program must be submitted to the Agency for written

1 approval. The Agency shall approve or deny a proposed  
2 modification based on application of the criteria described in  
3 paragraph (2). The Agency may waive payment of any fees  
4 associated with review and approval of a proposed modification  
5 to an approved alternative collection program if the review of  
6 the proposed modification does not require significant Agency  
7 staff time.

8 (k) In accordance with rules adopted by the Agency, a  
9 producer or producers managing an approved alternative  
10 collection program shall report annually to the stewardship  
11 organization and to the Agency the following information:

12 (1) The total tons of each type of packaging material  
13 collected, reused, recycled, disposed of at an  
14 incineration facility, or otherwise managed under the  
15 alternative collection program in the prior calendar year,  
16 including a breakdown of the total tons of each type of  
17 material to be credited to each producer participating in  
18 the alternative collection program.

19 (2) A list of the collection opportunities in the  
20 State for the types of packaging material managed under  
21 the alternative collection program that were made  
22 available in the prior calendar year.

23 (3) A description of the education and outreach  
24 strategies implemented by the alternative collection  
25 program in the prior calendar year to increase consumer  
26 awareness of the program throughout the State.

1           (4) Any additional information required by the Agency.

2           If the Agency determines that an approved alternative  
3 collection program is not operating in a manner consistent  
4 with the proposal approved under subsection (j) or this  
5 subsection, the Agency shall provide written notice to the  
6 producer or producers operating the alternative collection  
7 program regarding the nature of the deficiency, the actions  
8 necessary to correct the deficiency, and the time by which  
9 such actions must be implemented. If the Agency determines  
10 that the producer or group of producers have failed to  
11 implement the actions described in the written notice within  
12 the required time frame, the Agency shall notify the producer  
13 or group of producers as well as the stewardship organization  
14 in writing that the producer or group of producers are  
15 ineligible to offset payment obligations under the packaging  
16 stewardship program based on packaging material managed under  
17 the alternative collection program.

18           (1) In accordance with the provisions of this Section and  
19 rules adopted by the Agency, a unit of local government may  
20 elect to, but is not required to, participate in the packaging  
21 stewardship program under this Section. To be eligible for  
22 reimbursement of costs under subsection (m) as a participating  
23 unit of local government, a unit of local government must, at a  
24 minimum:

25           (1) provide for the collection and recycling of  
26 packaging material that is generated in the unit of local

1 government and is readily recyclable; and

2 (2) annually report to the stewardship organization,  
3 on a form provided and approved by the Agency, all  
4 information necessary for the stewardship organization to  
5 determine the unit of local government's incurred costs  
6 associated with its collection, processing,  
7 transportation, and recycling or other management of  
8 recyclable material and of municipal solid waste.

9 2 or more municipalities, municipally-owned solid waste  
10 processing facilities, or quasi-municipal entities that manage  
11 waste materials on behalf of a unit of local government may  
12 elect to jointly report to the stewardship organization as  
13 required under paragraph (2) and to jointly receive  
14 reimbursement payments under subsection (m) from the  
15 stewardship organization.

16 (m) In accordance with the rules adopted by the Agency  
17 under subsection (p), the stewardship organization shall  
18 annually disburse to participating municipalities from the  
19 packaging stewardship fund established under subsection (o)  
20 reimbursement payments for the median per-ton cost of managing  
21 packaging material that is readily recyclable and  
22 reimbursement payments for the median per-ton cost of managing  
23 packaging material that is not readily recyclable. For the  
24 purposes of this subsection, the cost to a unit of local  
25 government of managing packaging material may include, but is  
26 not limited to, the costs associated with the collection,

1 transportation, and processing of packaging material, whether  
2 readily recyclable or not readily recyclable.

3 In accordance with rules adopted by the Agency, the  
4 stewardship organization shall determine the amount of  
5 payments to participating municipalities under this subsection  
6 based on the following information:

7 (1) Information provided by participating  
8 municipalities to the stewardship organization in  
9 accordance with subsection (1) regarding the costs  
10 incurred by those municipalities in managing packaging  
11 material that is readily recyclable and packaging material  
12 that is not readily recyclable, which may include costs  
13 associated with the management of packaging material  
14 collected in public spaces and schools.

15 (2) Information provided to the Agency by recycling  
16 establishments and made available by the Agency to the  
17 stewardship organization, including the tons of recyclable  
18 material received by each recycling establishment from  
19 each unit of local government and the tons of processed  
20 recyclable material sold by each recycling establishment.

21 (3) Information provided to the Agency by recycling  
22 establishments not located in the State or by  
23 participating municipalities and made available by the  
24 Agency to the stewardship organization regarding the tons  
25 of recyclable material brokered by those municipalities to  
26 those recycling establishments and processed and sold by



1       those recycling establishments.

2           (4) Information obtained by the stewardship  
3       organization through the audits of facilities that process  
4       recyclable material generated in the State as required  
5       under subsection (p).

6           (5) Any other information specified by the Agency by  
7       rule.

8       In accordance with procedures and requirements adopted by  
9       the Agency by rule, the stewardship organization shall use the  
10      information described in paragraph (1) to determine the total  
11      tons of each packaging material type recycled by all  
12      municipalities at each recycling establishment and the  
13      percentage of those total tons attributable to each  
14      participating unit of local government. In the case of 2 or  
15      more municipalities that jointly send recyclable material to a  
16      recycling establishment, the stewardship organization shall  
17      assume that an equal amount of the jointly sent material is  
18      attributable to each resident of each unit of local government  
19      unless those municipalities by agreement identify an unequal  
20      per capita division of that jointly sent material for the  
21      purposes of this subsection.

22           (n) In accordance with the provisions of this subsection  
23      and rules adopted by the Agency, the stewardship organization  
24      shall make investments in education and infrastructure that  
25      support the recycling of packaging material in the State.

26      The stewardship organization shall submit any proposed

1 investment in education or infrastructure to the Agency for  
2 approval prior to making any expenditure for such investment.  
3 The proposal must incorporate any input received by the  
4 stewardship organization regarding the proposed investment  
5 from producers, recycling establishments, and participating  
6 municipalities.

7 The Agency shall adopt rules setting forth the criteria  
8 for evaluation and approval or denial of investments in  
9 education and infrastructure proposed by the stewardship  
10 organization. The Agency shall approve or deny a proposed  
11 investment within 90 days after receipt of the proposal from  
12 the stewardship organization.

13 The Agency shall ensure that preference for funding is  
14 given to proposals that support the State's waste management  
15 hierarchy under subsection (b) of Section 2 of the Illinois  
16 Solid Waste Management Act, promote a circular economy for  
17 packaging material types for which producers were required to  
18 make payments under subsection (h), increase the recyclability  
19 of packaging material that is not readily recyclable, increase  
20 access to recycling infrastructure in the State, improve  
21 consumer education in the State regarding recycling and  
22 recyclability, and equitably support recycling and education  
23 efforts in participating municipalities, particularly in those  
24 participating municipalities that have received minimal or no  
25 prior funding under this paragraph.

26 (o) In accordance with the provisions of this subsection

1 and rules adopted by the Agency, the stewardship organization  
2 shall establish and manage a packaging stewardship fund. The  
3 stewardship organization shall deposit into the fund all  
4 payments received from producers in accordance with subsection  
5 (h) and shall expend those funds for the following purposes:

6 (1) To reimburse participating municipalities in  
7 accordance with applicable provisions in subsections (l),  
8 (m), and (p) and the applicable rules adopted by the  
9 Agency under those subsections.

10 (2) To cover the operating costs of the stewardship  
11 organization, which must be annually verified by a  
12 third-party financial audit paid for by the stewardship  
13 organization as required under paragraph (12) of  
14 subsection (g).

15 (3) To pay to the Agency all applicable fees required  
16 under subsection (p), including reimbursement of any costs  
17 incurred by the Agency in adopting rules and in  
18 administering and enforcing this Section prior to the  
19 effective date of the contract entered into by the Agency  
20 and the stewardship organization under subsection (c).

21 (4) To support investments in education and  
22 infrastructure made in accordance with subsection (n).

23 (p) The Agency shall administer and enforce this Section  
24 and shall adopt rules as necessary to implement, administer,  
25 and enforce this Section. The Agency shall solicit input from  
26 interested parties in the development of any draft rules to

1 implement this Section, solicit public comment on the draft  
2 rules for a period of at least 30 days, and hold a public  
3 hearing on the draft rules in the same manner as a public  
4 hearing must be conducted under the Illinois Administrative  
5 Procedure Act.

6 Rules adopted by the Agency under this Section must  
7 include, at a minimum, the following:

8 (1) A process for annually determining a schedule of  
9 producer payments required under subsection (h), which  
10 must include, but is not limited to, provisions regarding  
11 the timing of producer payments and the timing of and  
12 information required to be provided in the annual producer  
13 report required under subsection (i). The process must  
14 comply with the following:

15 (A) The payment schedule adopted under this  
16 paragraph must provide for a flat fee option to be  
17 assessed on a tiered basis such that a low-volume  
18 producer is required to pay no more than \$500 per ton  
19 of packaging material and no more than \$7,500 in total  
20 annual fees to the stewardship organization under this  
21 Section.

22 (B) For producers other than low-volume producers,  
23 the payment schedule adopted under this paragraph must  
24 be based on and cover the cost of managing the amount  
25 of each type of packaging material sold, offered for  
26 sale, or distributed for sale in or into the State by a

1       producer and not managed under an approved alternative  
2       collection program, adjusted as applicable in  
3       accordance with the adjustment criteria adopted under  
4       subparagraph (C).

5       (C) For producers other than low-volume producers,  
6       the payment schedule adopted under this paragraph must  
7       delineate criteria to be used to adjust producer  
8       payments in a manner that incentivizes the use of  
9       recycled content in and increased recyclability of  
10      packaging material, lower toxicity in packaging  
11      material, a reduction of the amount of packaging  
12      material used, a reduction of litter from packaging  
13      material, increased reuse of packaging material, and  
14      labeling of packaging material to reduce consumer  
15      confusion and creates other incentives consistent with  
16      generally accepted industry standards.

17      (D) The rule must require as part of the annual  
18      producer reporting under subsection (i) the provision  
19      by a producer of all information necessary for the  
20      determination of the producer's payment obligation and  
21      the determination of the producer's compliance with  
22      respect to its products.

23      (E) For producers other than low-volume producers,  
24      the rule must require the producer to provide a  
25      description of the methods it used to determine the  
26      amount reported for each type of packaging material

1 associated with its products, a description of the  
2 characteristics of each type of packaging material  
3 that are relevant to the adjustment criteria adopted  
4 under subparagraph (C), and a list of the producer's  
5 brands and the UPCs of the products associated with  
6 each type of packaging material.

7 (F) For low-volume producers, the rule must  
8 require the reporting of only the information  
9 necessary for a calculation of the flat fee described  
10 in subparagraph (A) and a determination of the  
11 producer's compliance with the requirements of this  
12 Section.

13 (G) The rule must authorize a producer that is  
14 unable to fully satisfy the reporting requirements due  
15 to a failure to obtain sufficient information  
16 regarding the characteristics of the packaging  
17 material of products of the producer that are sold,  
18 offered for sale, or distributed for sale in or into  
19 the State to alternatively report to the stewardship  
20 organization an estimate of the total amount of that  
21 packaging material based on unit quantities as long as  
22 such alternative reporting includes a description of  
23 the methods used by the producer to calculate the  
24 estimate. When a producer alternatively reports an  
25 estimate in accordance with this subparagraph, unless  
26 otherwise determined by the Agency, the estimate must

1       be adjusted using the least favorable adjustment  
2       criteria adopted under subparagraph (C).

3       (2) A process for determining on an annual basis those  
4       types of packaging material that are readily recyclable,  
5       which must involve consultation with the stewardship  
6       organization and recycling establishments and must include  
7       a transitional period between the time that a type of  
8       packaging material is determined to be readily recyclable  
9       or to not be readily recyclable and the time that such  
10       determinations will be effective for the purposes of  
11       calculating producer payments and municipal reimbursements  
12       in accordance with this Section.

13       (3) A process for determining on an annual basis which  
14       municipalities are similar municipalities, which must  
15       involve consultation with participating municipalities.

16       (4) A process for determining municipal  
17       reimbursements, including a description of the information  
18       required from participating municipalities under  
19       subsection (l), a method for calculating the  
20       reimbursements required under subsection (m), and the  
21       timing for participating unit of local government  
22       reporting and payments to participating municipalities.  
23       The method for calculating reimbursements must include the  
24       median per-ton cost of managing packaging material that is  
25       readily recyclable and the median per-ton cost of managing  
26       packaging material that is not readily recyclable. The

1 method for calculating reimbursements must involve  
2 consultation with participating municipalities and be  
3 designed to incentivize municipal waste management  
4 activities that represent higher priorities on the solid  
5 waste management hierarchy.

6 (5) Requirements for the assessment of program  
7 performance, including the setting of program goals used  
8 to inform the producer payment schedule determined under  
9 paragraph (1) and the investments in infrastructure and  
10 education made under subsection (n), which must include,  
11 but are not limited to: program goals supporting an  
12 overall reduction by producers in the amount of packaging  
13 material used, an increased reuse by producers of  
14 packaging material, and an increased amount of  
15 post-consumer recycled content in packaging material used  
16 by producers; packaging material litter reduction goals;  
17 recycling access and collection rate goals for  
18 municipalities; and overall program and material-specific  
19 recycling rate goals. To the maximum extent practicable,  
20 material-specific recycling rate goals adopted under this  
21 paragraph must reflect the following recycling standards:

22 (A) Sorted glass is considered recycled if it does  
23 not require further processing before entering a glass  
24 furnace or before use in the production of filtration  
25 media, abrasive materials, glass fiber insulation, or  
26 construction materials.



1           (B) Sorted metal is considered recycled if it does  
2           not require further processing before entering a  
3           smelter or furnace.

4           (C) Sorted paper is considered recycled if it does  
5           not require further processing before entering a  
6           pulping operation.

7           (D) Plastic separated by polymer is considered  
8           recycled if it does not require further processing  
9           before entering a pelletization, extrusion or molding  
10          operation or, in the case of plastic flakes, does not  
11          require further processing before use in a final  
12          product.

13          (6) Requirements for the stewardship organization to  
14          conduct representative audits of recyclable material  
15          processed and sold by facilities that process recyclable  
16          material generated in the State, of municipal solid waste  
17          disposed of in the State, and of waste littered in the  
18          State, which must include, but are not limited to, the  
19          following:

20               (A) Provisions regarding the sampling techniques  
21               to be used in those audits, which must include random  
22               sampling.

23               (B) For audits of recyclable material, provisions  
24               regarding:

25                       (i) how those audits must be designed to  
26                       collect information regarding the extent to which

1           recyclable material processed and sold by those  
2           facilities reflects the tons of each type of  
3           packaging material collected in the State for  
4           recycling and the tons of each type of packaging  
5           material recycled in the State, as well as the  
6           ultimate destination of and intended use for that  
7           recycled material;

8           (ii) how those audits must be designed so that  
9           information collected through the audit of one  
10          facility will not be used to infer information  
11          about a different facility that uses different  
12          processing equipment, different sorting processes,  
13          or different staffing levels to conduct  
14          processing; and

15          (iii) the process by which a facility will be  
16          allowed to request and receive an audit if it can  
17          credibly demonstrate that an audit result being  
18          applied to its material output is not  
19          representative of its current operations.

20          (C) For audits of municipal solid waste,  
21          provisions regarding how the audits will be designed  
22          to collect information regarding the types and amount,  
23          whether by weight or volume, of packaging material in  
24          the waste stream and the percentage by weight and  
25          volume of the waste stream that is composed of  
26          packaging material.

1           (D) For audits of waste littered in the State,  
2           provisions regarding how the audits will be designed  
3           to collect information regarding the packaging  
4           material type by amount, whether by weight or volume,  
5           in sampled litter, identification of the producer or  
6           producers of the packaging material in sampled litter,  
7           if identifiable, and an evaluation based on those  
8           audits regarding the areas of the State in which  
9           litter accumulation is greatest.

10          (7) A schedule by which the stewardship organization  
11          must annually report to the Agency under subsection (g)  
12          and a schedule by which a producer or group of producers  
13          operating an approved alternative collection program must  
14          annually report to the stewardship organization and to the  
15          Agency under subsection (j).

16          (8) A process by which the stewardship organization  
17          will develop and submit for Agency review and a process by  
18          which the Agency shall review and approve or deny a  
19          proposed investment in education and infrastructure under  
20          subsection (n). The process must set forth the manner in  
21          which the stewardship organization is required to solicit  
22          and incorporate input in the development of proposed  
23          investments from producers, recycling establishments, and  
24          participating municipalities.

25          (g) At the time that the stewardship organization submits  
26          its annual report to the Agency under subsection (g), the

1 stewardship organization shall pay to the Agency a reasonable  
2 annual fee established by the Agency, not to exceed \$300,000,  
3 to cover the Agency's costs for review of the stewardship  
4 organization's annual report and the Agency's costs in the  
5 prior fiscal year for its oversight, administration, and  
6 enforcement of the packaging stewardship program. In  
7 accordance with subsection (o) the annual fee required under  
8 this subsection may include reimbursement of any costs  
9 incurred by the Agency in adopting rules and in administering  
10 and enforcing this Section prior to the effective date of the  
11 contract entered into by the Agency and the stewardship  
12 organization under subsection (c).

13 (r) A producer or group of producers, when submitting a  
14 proposal to the Agency for the establishment of an alternative  
15 collection program or submitting a proposal to the Agency for  
16 modifications to an approved alternative collection program  
17 under subsection (j), shall pay to the Agency a reasonable fee  
18 established by the Agency to cover the Agency's actual costs  
19 for review of the proposal or proposed modifications. A  
20 producer or group of producers operating an approved  
21 alternative collection program under subsection (j) shall pay  
22 to the Agency a reasonable annual fee established by the  
23 Agency, not to exceed \$10,000 per participating producer, to  
24 cover the Agency's costs for review of the producer's or  
25 group's annual report and the Agency's costs for the  
26 oversight, administration, and enforcement of the alternative

1 collection program, which may be waived by the Agency if those  
2 activities by the Agency do not require significant Agency  
3 staff time.

4 (s) The Agency shall review packaging material associated  
5 with certain federally regulated products to determine whether  
6 that packaging material should be excluded from the definition  
7 of "packaging material" under subsection (a). In making such a  
8 determination, the Agency shall, at a minimum, consider  
9 whether the packaging material for such products is required  
10 by federal law to meet specific content or construction  
11 standards that may preclude or significantly diminish the  
12 producer's ability to increase the recyclability or reduce the  
13 volume of the packaging material. If the Agency determines  
14 that any such product or its associated packaging material  
15 should be excluded from the definition of "packaging  
16 material", the Agency shall adopt an exclusion by rule. At a  
17 minimum, the Agency shall conduct a review in accordance with  
18 this subsection of the packaging material associated with the  
19 following federally regulated products:

20 (1) Material that is used for the containment,  
21 protection, delivery, presentation, or distribution of a  
22 drug, as that term is defined under Section 321 of the  
23 federal Food, Drug, and Cosmetic Act, as regulated by the  
24 United States Food and Drug Administration under the  
25 federal Food, Drug, and Cosmetic Act, or as collected  
26 under a stewardship program in the State that has been

1 approved for operation by the Agency and has been  
2 established to collect and dispose of such drugs,  
3 including, but not limited to, prescription and  
4 nonprescription drugs, drugs in medical devices and  
5 combination products, branded and generic drugs, and drugs  
6 for veterinary use.

7 (2) Material that is a medical device or a biological  
8 product, or is used for the containment, protection,  
9 delivery, presentation, or distribution of a medical  
10 device or a biological product, as regulated by the United  
11 States Food and Drug Administration under Parts 200, 300,  
12 and 800 of Title 21 of the Code of Federal Regulations.

13 (3) Material that is used for the containment,  
14 protection, delivery, presentation, or distribution of an  
15 over-the-counter human drug product for which  
16 tamper-evident packaging is required, as regulated by the  
17 United States Food and Drug Administration under 21 CFR  
18 211.132.

19 (4) Material that is used for the containment,  
20 protection, delivery, presentation, or distribution of a  
21 substance regulated by the United States Consumer Product  
22 Safety Commission under the federal Poison Prevention  
23 Packaging Act of 1970 for which special packaging is  
24 required under Part 1700 of Title 16 of the Code of Federal  
25 Regulations.

26 (t) Beginning February 15, 2025, and annually thereafter,

1 the Agency shall submit a report to the Senate Committee on  
2 Environment and Conservation and the House Committee on Energy  
3 and Environment. The report must include, at a minimum:

4 (1) data on the amount and type of packaging material  
5 associated with products sold, offered for sale, or  
6 distributed for sale in or into the State;

7 (2) data regarding how that packaging material was  
8 managed; and

9 (3) any recommendations for amendments to the programs  
10 implemented under this Section, including, but not limited  
11 to, the establishment of new program goals or the  
12 imposition of a prohibition on the sale, offer for sale,  
13 or distribution for sale in or into the State of products  
14 associated with packaging material that the Agency has  
15 determined is nonessential, is contaminating collected  
16 recyclable material, is a common source of litter, or  
17 exhibits toxicity, particularly if that toxicity is  
18 demonstrated to have a disproportionate impact on any  
19 community in the State.

20 Beginning February 15, 2028, and every 5 years thereafter,  
21 the report under this subsection must describe the results of  
22 a comprehensive review of the rules adopted by the Agency  
23 under this Section and must include recommendations by the  
24 Agency for any legislative changes to this Section determined  
25 necessary as a result of that review, including, but not  
26 limited to, changes to the flat fee that may be paid by a

1 low-volume producer under subparagraph (A) of paragraph (1) of  
2 subsection (p), as well as a description of any changes to  
3 those rules that the Agency intends to propose in future  
4 rulemaking.

5 (u) A producer or stewardship organization, including a  
6 producer's or stewardship organization's officers, members,  
7 employees, and agents that organize a packaging stewardship  
8 program or an alternative collection program under this  
9 Section, is immune from liability for the producer's or  
10 stewardship organization's conduct under State laws relating  
11 to antitrust, restraint of trade, unfair trade practices, and  
12 other regulation of trade or commerce only to the extent  
13 necessary to plan and implement the producer's or stewardship  
14 organization's packaging stewardship program or alternative  
15 collection program consistent with the provisions of this  
16 Section.

17 (v) Proprietary information submitted to the Agency under  
18 the requirements of this Section or the rules adopted under  
19 this Section that is identified by the submitter as  
20 proprietary information is confidential and must be handled by  
21 the Agency in the same manner as other confidential  
22 information is handled.

23 (w) On or before December 31, 2023, the Agency shall adopt  
24 rules necessary for the implementation, administration, and  
25 enforcement of a stewardship program for packaging pursuant to  
26 this Section. Notwithstanding any provision of law to the



1 contrary, the Agency may use funds within the Solid Waste  
2 Management Fund to support its activities required under this  
3 Section, except that, if the Agency uses funds within the  
4 Solid Waste Management Fund as authorized under this  
5 subsection, the Agency shall deposit back into that Fund the  
6 same amount of funds withdrawn once reimbursed.